

## 9 FAM 40.68 PROCEDURAL NOTES

*(CT:VISA-821; 07-14-2006)*  
*(Office of Origin: CA/VO/L/R)*

### 9 FAM 40.68 PN1 ANNOTATING THE VISA

*(CT:VISA-821; 07-14-2006)*

Nonimmigrant visas (*NIV*) issued to aliens exempted from INA 222(g) under extraordinary circumstances should be annotated:

**"INA Section 222(g) overcome *where extraordinary circumstances are found by the Secretary of State to exist*".**

### 9 FAM 40.68 PN2 REQUESTING ADVISORY OPINIONS

*(CT:VISA-821; 07-14-2006)*

If posts are unsure whether an applicant is subject to INA 222(g), or if posts have questions as to whether "extraordinary circumstances" exist for a favorable recommendation for an exemption from INA 222(g), posts should submit an advisory opinion request to CA/VO/L/A. If posts believe that "extraordinary circumstances" do exist, they still must submit an advisory opinion with CA/VO/L/A for approval. The Department will not render an advisory opinion on an "extraordinary circumstances" request unless the applicant has been found subject to INA 222(g).

### 9 FAM 40.68 PN3 DETERMINING OVERSTAYS

#### 9 FAM 40.68 PN3.1 Reliance on Class Entries

*(CT:VISA-821; 07-14-2006)*

- a. In some instances, *Department of Homeland Security (DHS)* may enter a lookout when a visa is cancelled under INA 222(g) and *DHS* removes the alien or permits the alien to withdraw his or her application for admission. In such cases, *DHS* will use the code "275" for voluntary withdrawals or "ER7" (or "ER6") to indicate expedited removal for aliens not in possession of the required document (or for fraud). Also, if *DHS* or an

immigration judge (*IJ*) determines that an alien previously admitted for duration of status has violated status, the alien's name may be entered into the *DHS* lookout database. These entries would automatically pass into *consular lookout and support system* (CLASS).

- b. In those instances when *DHS* does not enter the lookout, it is *your* responsibility to determine whether the alien is ineligible under INA 222(g). (See 9 FAM 40.68 PN3.2.)

## **9 FAM 40.68 PN3.2 *Department of Homeland Security (DHS) Departure Controls***

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Eventually, when *DHS* departure controls are in place, the *DHS* will document overstays at the time of departure. Until such time, *you* cannot be expected to make a complete search and determination as to whether an alien has remained beyond the period of authorized stay. Therefore, unless in the course of visa processing the possibility of a previous overstay becomes apparent through information otherwise routinely obtained (e.g., through inspection of passport, answer to question 30 on the Form DS-156, Nonimmigrant Visa Application), lengthy interrogation of applicants to determine whether the alien is subject to INA 222(g) should not ordinarily be undertaken.

## **9 FAM 40.68 PN4 REFUSALS UNDER INA 222(G)**

*(CT:VISA-821; 07-14-2006)*

If *you* determine that an alien is ineligible for visa processing under INA 222(g):

- (1) The visa on which the overstay occurred should be physically cancelled (if it is still valid);
- (2) The alien should be advised, in writing, that he or she has been determined to be ineligible under INA 222(g) and must apply for a visa in the country of his or her nationality;
- (3) The applicant's name should be entered into CLASS under code "222" with the annotation "Visa Overstay" in the free field; and
- (4) The *Machine Readable Visa* (MRV) fee should be retained.